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COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT IN RESPONSE TO THE DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION NOTICE OF MARKET-BASED ACTIONS TO RELIEVE AIRPORT CONGESTION AND DELAY

66 Fed. Reg. 43947 (August 21, 2001)
66 Fed. Reg. 55978 (November 5, 2001)
67 Fed. Reg. 19614 (April 22, 2002)
Docket No. OST-2001-9849 – 149

va-9110

July 22, 2002

Federal Aviation Administration
U.S. Department of Transportation Dockets
400 Seventh Street, S.W.
Room Plaza 401
Washington, DC 20590

Re: *Notice of Market-Based Actions to Relieve Airport Congestion and Delay*, 66 Fed. Reg. 43947 (August 21, 2001), *modified by* 66 Fed. Reg. 55978 (November 5, 2001) and 67 Fed. Reg. 19614 (April 22, 2002), Docket No. OST-2001-9849

San Francisco International Airport (the "Airport" or "SFO") respectfully submits the following comments on the Department of Transportation's ("DOT's") and Federal Aviation Administration's ("FAA's") Notice of Market-Based Actions to Relieve Airport Congestion and Delay (the "Notice").[1]

SFO's Interest In This Inquiry

The Airport has an important stake in this industry-wide Notice concerning market-based approaches to manage congestion and delays and to improve the efficiency of airport operations. In 2000, the Airport was the fifth busiest in the U.S., and the ninth busiest in the world, with over 41 million enplanements. SFO serves not only as a primary West Coast hub for domestic air travel but also as a key international gateway, particularly for those travelling to and from Asia.

The Airport is also a vital engine for the Bay Area and Northern California economies. For example, according to the Bay Area Economic Forum, in FY 1998-99, SFO and the visitor industry in the Bay Area generated over 265,000 jobs, personal

[1] *Notice of Market-Based Actions to Relieve Airport Congestion and Delay*, 66 Fed. Reg. 43947 (August 21, 2001), *modified by* 66 Fed. Reg. 55978 (November 5, 2001) and 67 Fed. Reg. 19614 (April 22, 2002).

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income of over $8 billion and taxes amounting to roughly $3.3 billion.[2] The ability of the Airport to manage access to its facilities efficiently and to enhance capacity are critical to the Bay Area economy's future growth.

In the DOT/FAA's companion docket, the Notice of Policy Options For Managing Capacity at LaGuardia Airport (the "LGA Docket"),[3] some including the Air Transport Association ("ATA") and its member airlines question whether in the wake of the tragic events of 9/11 there is any need to address congestion management and capacity enhancement.[4] Although the events of 9/11 have reduced the level of air carrier operations and enplanements at SFO and many U.S. airports, such reductions are temporary. The FAA's forecast data indicates that large airline traffic will match pre-9/11 levels sometime in FY 2003.[5] Indeed, traffic at SFO and in the airport system has already rebounded substantially. Although SFO's traffic remains below year ago levels, enplanements increased roughly 28% from the depressed levels of September 2001 through May 2002 (2,083,400 passengers in September 2001 versus 2,663,600 passengers in May 2002).

With this rebound in demand, congestion and delays have risen commensurately. According to flight data supplied by the major airlines to DOT, SFO had the lowest level

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[2] Bay Area Economic Forum, *Air Transport and the Bay Area Economy, Phase I*, January 2000, at 10, available at http://www.bayeconfor.org/pdf/airport.pdf.

[3] *Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Application*, 66 Fed. Reg. 31731 (June 15, 2001), *as amended*, 67 Fed. Reg. 13401 (March 22, 2002), FAA Docket No. 2001-9854.

[4] Comments of the Air Transport Association in the LGA Docket at 9-10.

[5] Presentation of John M. Rodgers, Director of Aviation Policy and Plans, 2002 FAA Commercial Aviation Forecast Conference, available at http://www.api.faa.gov/Conference2000commercial/Rodgers.

of on-time arrivals (73.3%) during April 2002 among the 32 reportable U.S. airports.[6] Accordingly, SFO believes it is important that DOT address the issues of congestion management and capacity enhancement in order to be prepared for the resumption of growth in air travel demand.

LaGuardia Docket

As an initial matter, the Airport incorporates by reference the comments that it filed in the LGA Docket, attached hereto as Appendix A. In that filing, the Airport included background and comments that are relevant to a number of the issues that the DOT seeks to address in this docket. To summarize, in the LGA Docket, SFO first discussed the limitations of congestion management methods by comparison with the long-term beneficial effects of enhancing airport capacity (the building and reconfiguration of runways and other airfield infrastructure). Although long-term capacity enhancement is SFO's preferred solution to congestion and delay, it does recognize the valuable, if limited, benefits that congestion management solutions can offer. Second, the Airport discussed the primary role that an airport proprietor can and should play in the determination of which congestion management methods are most appropriate to use at its own airport. SFO then specifically discussed the congestion management options proposed for LaGuardia Airport ("LGA" or "LaGuardia"). In its comments, SFO declined to recommend a particular congestion management method for LaGuardia out of deference to the Port Authority of New York and New Jersey (the "Port Authority") and its proprietary right to select the best option(s) for LGA.

[6] U.S. Dep't of Transportation, *Air Travel Consumer Report*, June 2002, at 8, available at http://www.dot.gov/airconsumer/0206atcr.pdf.

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SFO also advised the FAA in the LGA Docket that it did not believe that there would be surplus or excess revenues generated from any market-based congestion management approaches, and that the airport proprietor should have the discretion to use any revenues derived from such approaches for reinvestment in airport facilities. Finally, the Airport expressed support for the use of the administrative options proposed in the LGA Docket if they are appropriate, but that as a general matter, the Airport has a preference for market-based approaches.

Industry-Wide Market-Based Notice

SFO welcomes the opportunity to comment on the issues raised in the Notice and commends DOT/FAA for their continued timely attention to congestion management and enhancement of airport capacity. The Airport also commends DOT for its recognition that "[t]he adoption of market-based approaches to improve the use of scarce resources is an established economic principle."[7] SFO also agrees that the current weight-based landing fees traditionally used by airports to price access do not account for the "impact of an additional flight on congestion and delay."[8] As DOT observes:

> the benefits an air carrier receives from scheduling an additional flight are not balanced against the full costs (private and external) imposed on all the parties using an airport, which can result in too many scheduled flights and thus congestion.[9]

In the Notice, the DOT asks for comments on the potential use of "market-based approaches," or "the development and imposition of airport fees that are designed specifically to encourage air carriers to use limited airport capacity in a more efficient

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[7] *Id.*.

[8] 66 Fed. Reg. at 43948.

[9] *Id.* n.1.

manner."[10] In directing the nature of the comments, the DOT asks a series of twenty-two (22) specific questions, noting that commenters are not required to address all questions and may combine responses where appropriate.[11] SFO addresses a number of those specific questions, as well as provides further comments that it believes are important to the consideration of industry-wide congestion management at the nation's airports.

SFO recognizes the practical difficulties in enhancing capacity, and thus that there is a need for short-term solutions for relieving congestion and reducing delay. Therefore, the Airport supports efforts to identify the best short term solutions that will be most effective and most readily implemented. SFO also recognizes that true long-term solutions to growing demand for airport capacity ultimately entail a combination of building more runway capacity as well as implementing technological improvements, and more efficient management and use of existing capacity.

The Airport also observes, as numerous economists have commented, an increase in capacity will ultimately be inefficient if efficient pricing or other market-based approaches to managing limited facilities are not also implemented.[12] Thus, in order to ensure that the use of new additional airport capacity is maximized, SFO supports DOT's efforts with this Notice to ensure that various congestion management tools are available to airport proprietors.

SFO now addresses specific questions from the Notice below:

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[10] 66 Fed. Reg. at 43948.

[11] *Id.* at 43949-50.

[12] *See, e.g.*, Alfred E. Khan. *Congestion Pricing Is The Next Step In Travel Deregulation*, WASHINGTON TIMES, Sept. 4, 2001, at A14 ("Kahn Op-Ed"); Evidence of Alfred E. Kahn on Behalf of Sydney Airports Corp. Regarding Draft Aeronautical Pricing Proposal, Jan. 17, 2001, at 10 ("Kahn Evidence"), available at http://www.accc.gov.av/airport/sydney/SACL_Attachment.pdf; Daniel R. Polsby, *Airport Price of Aircraft Technology and Landing Slots: An Economic Critique of Federal Regulatory Policy*, 89 CALIF. L. REV. 779, 799 (May 2001).

(1) Should market-based mechanisms be considered to address the allocation of scarce aviation-access resources and thereby minimize delays resulting from congestion while maximizing customer service? If so, which specific mechanisms are most promising? Why?

(16) Under what conditions would alternate approaches, such as administrative options (e.g., lotteries, minimum aircraft size), reduce congestion and delay?

(18) Will market-based approaches encourage/discourage the operation of certain types of aircraft?

(21) Should market-based approaches be crafted to encourage airlines to operate large aircraft, maximizing the number of seats per turn?

Because the answers are interrelated, SFO addresses Questions 1, 16, 18 and 21 together.

SFO supports the use of congestion management methods that are appropriate to the circumstances at individual airports and that are effective. Although SFO prefers market-based approaches, as these typically provide the greatest flexibility for airports, the Airport also supports the use of administrative options, such as those proposed in the LGA Docket, when individual circumstances warrant.

The Airport encourages the use of a variety of market-based approaches, such as congestion pricing, peak period pricing, and auctions, or any other market-based pricing mechanism that can be implemented without unjust discrimination against airport users. In weighing the relative merits of a few of these approaches, SFO defines them below:

- **Congestion pricing:** a non-weight based system of landing fees, where an airport proprietor charges a landing fee that reflects the additional costs imposed on others by flights operating during peak or congested periods. One result of congestion pricing is a likely reduction in the number of aircraft landings by encouraging air carriers to use larger, and therefore fewer, aircraft to conduct their operations (a concept referred to as "upgauging").

- **Peak period pricing:** a set of landing fees that vary according to the time of day and the level of aircraft activity. During the hours of the day when the number of aircraft operations per hour is highest and an airport is most

congested, the landing fees charged to the airport user would also be the highest. Since 1996, the DOT's Final Rates and Changes Policy has recognized that it is appropriate for airports to impose "properly structured" peak period landing fees to maximize efficient use of scarce airport facilities.[13] During the hours of the day when congestion levels are lowest, landing fees would be commensurately lower. Peak period pricing is designed to encourage airlines to shift operations to less congested hours of the day and/or to consolidate their excess operations during peak hours, thereby more closely aligning airfield demand with airfield capacity. SFO notes that in the June 2002 Final Environmental Impact Statement approving Boston Logan International Airport's new proposed runway, the FAA also endorsed use of a peak pricing system in the future at Logan in conjunction with the new runway.[14]

- **Auctions:** where the FAA's air traffic control system would establish the hourly acceptance capacity of an airport, a number that could change over time or under differing conditions. Carriers could bid on an available reservation for a particular time, with the winning bidder paying what the opportunity is worth to them.

Out of these market-based approaches, SFO prefers congestion pricing for several reasons. First, SFO believes that this is a highly effective method of pricing scarce airport resources. Second, congestion pricing encourages air carriers to upgauge their aircraft, alleviating congestion and delays. As SFO noted in its comments in the LGA Docket, it was among the first airports in the nation to publicly recognize the value of upgauging as a means of congestion management.[15] This is not surprising since at the peak of the Airport's congestion in 1998, 18% of air carrier operations carried 3% of the passengers travelling through its facilities. Additionally, SFO's operations are greatly influenced by the weather -- its operations can be effectively cut by half on a rainy day,

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[13] *Policy Regarding Airport Rates and Charges*, 62 Fed. Reg. 31994, 32021 (1996), *vacated in part, Air Transport Assoc. v. DOT*, 119 F.3d 38 (D.C. Cir. 1997), *remand pending*.

[14] U.S. Dep't of Transportation, Federal Aviation Administration, Logan Airside Improvements Planning Project: Final Environmental Impact Statement, Exec. Summary, ES-4 (June 20, 2002) ("Boston FEIS").

[15] Charles River Assocs. and the John F. Brown Company, *Reducing Weather-Related Delays ad Cancellations at San Francisco International Airport*, Part I: *Summary Report*, at 20-21 (April 2000).

as it is constrained to using only one of its arrival runways.[16] Upgauging would help to minimize this effect and more efficiently allocate its limited airfield resources.[17] As Professor Michael Levine of Harvard Law School, a former airline executive, wrote in a seminal article:

> The weight system has results equally perverse for airline users. Smaller aircraft can be scheduled at relatively high frequency during peak hours and will incur the same airport charges as would be incurred by fewer larger aircraft carrying the same number of passengers. For short-haul routes especially, greater frequency confers substantial competitive advantages. Thus airlines have a strong incentive to contribute to congestion and misallocation by scheduling frequent, relatively low-value flights in smaller aircraft.[18]

Last, but certainly not least, the Airport firmly believes that if the congestion fees are properly structured, they will help maintain small community service and promote new entry. Air carriers serving small communities could receive a credit for or a reduction in fees, or the pricing structure could include a set-aside or partial exemption from these air carriers' fees. Congestion pricing would create a more properly structured market. New entrants, in turn, could make better decisions whether to enter those markets.

SFO declines to advocate a specific set of circumstances that must be met in order for an airport proprietor to move towards a market-based pricing tools for congestion management. The Airport notes that there may be airports that, for contractual or other reasons, cannot in the short term implement market-based pricing mechanisms, and in those circumstances, the Airport believes DOT should encourage the use of alternate

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[16] *Id.* at 7-8.

[17] *Id.* at 20-22, 33.

[18] Michael E. Levine, *Landing Fees and the Airport Congestion Problem*, 12 J. LAW ECON., 79, 94 (1969).

administrative options. Additionally, airports which voluntarily elect to implement administrative options for ease of use or use a combination of administrative and market-based pricing approaches should be permitted to do so. In short, SFO advocates maximum flexibility for airports to choose and implement methods which would help reduce congestion and delay.

The Airport supports the use of administrative mechanisms that are tailored to the particular airports' needs. For example, administrative upgauging may not be an appropriate mechanism to use at an airport that cannot accommodate substantial numbers of large aircraft, and in those circumstances, an administrative slot allocation scheme may be a better solution.

(3) Will market-based pricing policies at airports help alleviate delay and congestion? Will they increase customer access to the airport or other nearby airports? If so, how?

SFO believes that market-based pricing will definitely assist in alleviating congestion and delay. Like most other resources, airport facilities are a scarce commodity and, accordingly, the best method for allocation of such commodities is a free and open market. As the DOT itself has acknowledged, "[t]he adoption of market-based approaches to improve the use of scarce resources is an established economic principle."[19]

Market-based pricing will also alleviate congestion and delay by more properly aligning airport supply with air service demand. As Professor Alfred E. Kahn, the architect of airline deregulation, has colorfully noted:

> We have no hesitation in other markets about letting price rise to equate supply and demand of scarce goods. Why should scarce runway capacity

[19] 66 Fed. Reg. at 43948.

> be any different? Suppose we charged for oil paintings by the pound? You'd have more than congestion, you'd have riots at the art dealers with Van Gogh paintings for sale.[20]

SFO believes that airport congestion imposes costs on the aviation system that are best addressed by using market principles. Professor Levine, the longtime transportation economist, agrees:

> We have seen that the existing price system for airport services fails to allocate the existing capacity so as to maximize its value. It fails also to guide investment in airports so as to achieve the appropriate mix and level of output with a minimum investment of resources. This failure is socially wasteful in two ways -- through congestion and inappropriate facilities it prevents the air transport industry from maximizing consumer satisfaction, and by failing to appropriately match investment to output it wastes resources which could be used to satisfy wants elsewhere in the economy.[21]

Market-based tools are generally preferable and more effective than administrative options. According to Professor Kahn, it is universally recognized that the use of price produces superior economic efficiency than administrative mechanisms for allocating scarce resources such as airport capacity.[22] While administrative tools such as the High Density Rule[23] have been used in the past, they are typically less effective than market-based approaches and more susceptible to manipulation and anti-competitive behavior.[24]

Air carriers need not worry that airport resources will be unavailable to them. To the contrary, SFO strongly believes that the resources will continue to be openly available

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[20] Kahn Op-Ed.

[21] Levine, *supra*, at 95.

[22] Kahn Evidence, at 10.

[23] 14 C.F.R. §§ 93.121 *et seq.* (2002).

[24] *See, e.g.*, Robert M. Hardaway, *The FAA 'Buy-Sell' Slot Rule: Airline Deregulation at the Crossroads*, 52 J. AIR L. & COM. 1 (Fall 1986)

to them, and such resources likely will expand. That is, market pricing will essentially increase the amount of capacity, spreading the demand more evenly throughout the day, and encouraging the use of underutilized slots at off peak times. This will offer consumers greater choice, in time flexibility, pricing of fares, and indeed, choice of airports.[25] The only difference is that the implementation of market-based pricing will ensure that the air carriers that most value the particular airport access or slot periods will receive them first.

Indeed, even former American Airlines CEO Bob Crandall believes market-based approaches to congestion management will be beneficial across the board:

> One of the most overlooked by-products of that change is that more airlines would operate more airplanes to alternative airports. Which means that effective rationing of a scarce commodity would benefit not only those who would pay for the privilege of flying to a preferred (congested) airport. It would also be good for competition, good for consumers who seek the lowest prices, and good for general aviation."[26]

(4) Will market-based approaches provide information on where, how much, and what type of new airport capacity is needed?

SFO believes that the market-based approaches -- based on proper price signals -- will target the appropriate amount of new airport capacity that is needed. Once market-based pricing is implemented, certain values will be assigned to the slot times at various airport locations. It will be a simple matter to track these values and their relation to one another in order to analyze the patterns that define the air carriers' and travelling public's needs. Such an analysis might show that passengers are willing to shift their travel times

[25] In certain regions of the U.S. (outside of the Bay Area), there are underutilized or secondary airports that may experience increased usage as a result of market-based approaches to congestion management.

[26] Remarks of Robert L. Crandall, former Chairman, President and CEO, AMR/American Airlines (retired), Aviation Summit, U.S. Chamber of Commerce, Feb. 2, 2001, video and audio archive available at http://www.uschamber.org/NCF/Events/Past+Events/Aviation/Agenda.htm

to nonpeak hours, in which case, the need for additional capacity is not as great. Alternatively, the analysis might indicate that travelers and air carriers are willing to pay premium prices for all hours of the day, which would be a strong indicator of the need for additional airfield capacity. Moreover, the analysis would also indicate which airports are more likely to need additional capacity. Those airports at which air carriers are paying a higher market-based fees are more likely to need additional capacity; while those airports that do not even need to use market-based pricing will likely not need to add any new capacity.

(6) If market-based approaches are not revenue neutral, how should "surplus" revenues be used? Should these revenues only be used to expand capacity at the airport where they are generated? Or should such revenues be used to meet regional or national capacity needs? If so, how?

(10) What will be the economic effects of market-based approaches on various categories of airport users? The airport? The economy of the surrounding communities?

(12) What benefits and/or cost savings can be achieved by airlines if airports adopt market-based approaches? What costs will airports save if such policies are adopted? What new costs will be imposed and/or travel options reduced?

Because the answers are interrelated, SFO addresses Questions 6, 10, and 12 together.

SFO believes that market-based congestion management methods will not result in "surplus" revenues. Rather, market-based methods will result in a far more efficient allocation of resources, which will mean less delay and congestion, which in turn will mean less *total* costs -- passenger fares plus delay costs -- to travelers and industries. Ultimately, then, market-based pricing will result in a more efficient market with overall cost savings to airports, air carriers, and travelers. In fact, in achieving these efficiencies, market-based pricing more likely will have the effect of driving revenues down.

If, however, revenues to certain airports should increase, the notion that those revenues would be "surplus" is still false. Any revenues achieved would simply be reinvested into the airport, in the same manner landing fees are currently reinvested. In the unlikely event that the airport is not in need of further monies, there may be ways that revenues could be used to enhance the surrounding communities, whether through noise mitigation or other investments. As DOT is aware, such revenues will not be misused in any event because federal law prohibits unlawful diversion of airport revenues.[27]

Furthermore, as publicly-owned and operated entities, airports such as SFO are accountable to their local communities. Publicly-owned airports have built-in incentives to promote the use of their facilities and to reinvest any revenues generated through market-based pricing into their facilities. Such reinvestment in airport facilities then rebounds to the benefit of local economies and surrounding communities. For example, SFO and its surrounding communities are interdependent economic actors. The Bay Area Economic Forum study shows that the Bay Area airports including SFO, Oakland International Airport and San Jose Airport, generated or supported $37.7 billion in business revenues in fiscal year 1998-99, that those revenues supported 470,000 jobs, which in turn generated over $13.2 billion in personal income.[28] With this interdependence, as market-based pricing reduces congestion and delay at SFO, the surrounding communities will benefit as well. Put more simply, if SFO were to receive

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[27] 49 U.S.C. 47107(b).

[28] Bay Area Economic Forum, *Air Transport and the Bay Area Economy, Phase 1*, January 2000, at 9-10, available on at http://www.bayeconfor.org/pdf/airport.pdf. In contrast, post-9/11, the same organization estimates that these figures have been reduced by 20-25% with the downturn in the economy -- not much greater than the 18-20% estimated reduction should runways at SFO not be reconfigured. Bay Area Economic Forum, *Air Transport and the Bay Area Economy, Crisis in Air Travel: Weathering the Downturn*, January 2002, at 19-20, available at http://www.bayeconfor.org/pdf/aircrisis.pdf.

"surplus" revenues, it would have every incentive to reinvest those revenues into the Airport, which would have the additional effect of benefiting the larger Bay Area economy.

(13) Should the elimination of all delays at an airport be the objective of any market-based policy adopted? If so, will that result in less than optimum use of scarce capacity? If not, how much delay is appropriate?

(14) How would any market-based approach take into account certain random factors (weather, runway repairs, etc.) that affect airport efficiency and delay?

Because the answers are interrelated, SFO addresses Questions 13 and 14 together.

SFO believes that the elimination of *all* delays at an airport is an unrealistic goal. The Airport points out that there are a variety of factors that can affect flight delays other than constrained airport facilities. For instance, weather, mechanical failure, security screening or other issues may cause extensive delays. In particular, SFO has studied this issue in the past, as a large portion of the delays at SFO are due to changeable and inclement weather conditions.

Based on its extensive studies of the causes of delays and potential approaches to reducing delay, it is the Airport's belief that administrative rules to manage congestion and delay can generally only be designed to apply across the board, and it is not feasible to impose such rules only on bad weather days. Conversely, market-based pricing mechanisms, which work as neutral and objective signals of the value that air carriers place upon a particular slot, tend to avoid this pitfall. Market-based pricing would allow air carriers to determine, using their yield management models on an overall seasonal or yearly basis what value their customers place on access to particular airports during particular periods.

(22) Should the use of market-based approaches be linked to airports and airlines vigorously pursuing ways to expand airport capacity?

SFO believes that it is unnecessary for DOT to require, as a condition for using market-based approaches, that airports using such approaches commit to expanding airport capacity. Publicly-owned airports have embedded incentives for using market-based revenues to expand and enhance airport capacity. Major U.S. airports derive substantial parts of their operating revenues from airport concessions such as parking, rental cars, retail and food service as well as fees from aeronautical facilities and services and, therefore, airport directors have strong reasons to expand airport access to increase use of their facilities and services. With very few exceptions -- notably LaGuardia -- most U.S. airports have the ability to reuse market-based revenues in expansion or reconfiguration of airfield capacity for more efficient use of such facilities. And even at airports where new runways cannot be added, such as LaGuardia, airports have strong incentives to use such revenues to improve nonairfield facilities, for noise mitigation or other valuable public purposes. Accordingly, SFO does not believe the use of market-based approaches should be conditioned only on use of revenues for airfield expansion.

CONCLUSION

SFO supports the use of market-based tools to manage congestion and delays, however, airport proprietors must be given the flexibility to use the tools (including administrative options) that are most appropriate for their communities.

John L. Martin
Director
San Francisco International Airport

va-9110

ATTACHMENT A

COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT IN RESPONSE TO THE FAA'S NOTICE OF POLICY OPTIONS FOR MANAGING CAPACITY AT LAGUARDIA AIRPORT AND PROPOSED EXTENSION OF LOTTERY ALLOCATION

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COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT IN RESPONSE TO THE FAA'S NOTICE OF POLICY OPTIONS FOR MANAGING CAPACITY AT LAGUARDIA AIRPORT AND PROPOSED EXTENSION OF LOTTERY ALLOCATION

66 Fed. Reg. 31731 (June 12, 2001)
67 Fed. Reg. 13401 (March 22, 2002)
Docket No. FAA-2001-9854

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June 20, 2002

Federal Aviation Administration
U.S. Department of Transportation Dockets
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Re: Notice of Proposed Rulemaking Regarding the Notice of Policy Options for Managing Capacity at LaGuardia, 66 Fed. Reg. 31731 (June 12, 2001), 67 Fed. Reg. 13401 (March 22, 2002), Docket No. FAA-2001-9854

San Francisco International Airport (the "Airport" or "SFO") respectfully submits the following comments on Phase II of the Federal Aviation Administration's ("FAA's") Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Application ("Notice"). 66 Fed. Reg. 31731 (June 12, 2001), *as amended*, 67 Fed. Reg. 13401 (March 22, 2002).

In 2000, the Airport was the fifth busiest airport in the United States and the ninth busiest in the world with over 41 million enplanements. Not only does SFO serve as a primary West Coast hub for domestic air travel, but it also represents a critical gateway for international travelers, particularly those travelling to and from Asia. Given the Airport's prominence in the world's air travel infrastructure, SFO welcomes the FAA's efforts through this Notice of Policy Options For Managing Capacity at LaGuardia Airport ("LaGuardia" or "LGA") and the related Department

of Transportation ("DOT") notice on market-based approaches,[1] to address appropriate methods for reducing airport congestion and delays.

Although the tragic events of 9/11 have reduced the level of air carrier operations and passenger enplanements at most U.S. airports, in turn, reducing the levels of airport congestion and delays, SFO believes these are likely to be temporary phenomena. As the General Accounting Office noted in a relatively recent report entitled "National Airspace System: Long-Term Capacity Planning Needed Despite Recent Reduction in Flight Delays," GAO-02-185 (Dec. 2001), economic recovery and declining public apprehension about flying will inevitably lead to increased demands on the air transport system. Indeed, although flight delays have generally declined since 9/11, major U.S. airports continue to experience substantial levels of congestion and delay. *Id.* at. 29. For example, although SFO's passenger traffic dropped 15.6 percent in 2001, SFO is currently experiencing a rebound in passenger traffic. Also, data supplied by the airlines to DOT for April 2002 covering 32 reportable U.S. airports, indicates that SFO had the worst level of on-time arrivals (73.3%) among major airports, while LaGuardia was tied for fifth worst (80.5%).[2]

Accordingly, SFO applauds the FAA and DOT's farsightedness in reopening for public comment the two congestion and delay-related notices.

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[1] Notice of Market-Based Actions to Relieve Airport Congestion and Delay, 66 Fed. Reg. 43947 (Aug. 21, 2001).

[2] Air Travel Consumer Report, Office of Aviation Enforcement and Proceedings, DOT, p. 8 (June 2002), http://www.dot.gov/airconsumer/0206atcr.pdf.

The Role of Congestion Management

Congestion management options are limited in what they can accomplish. They are generally not a long-term solution to severe congestion at an airport. As short-term solutions, congestion management techniques are therefore not a substitute for expansion of runway capacity and other airport infrastructure that would fundamentally increase the airport's ability to serve its air carrier and travelling public clientele. As the FAA points out in the Notice when an airport operator begins routinely to experience increasing levels of delay, the operator typically explores ways to increase the airport's limited capacity such as the addition of new runways. 66 Fed. Reg. at 31732. SFO agrees with the FAA that this is normally the "preferred approach" for relieving congestion and reducing delay. Ultimately, long-term solutions to growing demand for airport capacity entail a combination of building more runway capacity and implementing technological improvements allowing for more efficient use of existing capacity. Congestion management solutions may be used as an airport proprietor moves towards these long-term solutions in order to facilitate their implementation, but generally, they are not the ultimate solution.

Because of their temporary nature, congestion management solutions may be only appropriate at those airports with substantial levels of delay and congestion, such as LaGuardia. As the FAA points out in the Notice, LGA faces unique physical constraints that are not a problem for most airports. *Id.* at 31732. Due to its small physical layout (680 acres), and its location in the Borough of Queens in New York City, just seven miles from Midtown Manhattan, bordered by two bays, LaGuardia is physically constrained. Specifically, it cannot expand its runways to alleviate

congestion in the long-term. For LaGuardia, then, some form of congestion management is the *only* practical solution available.

SFO stresses that LGA's circumstances are distinct from its own situation, and indeed, the situation of many other major congested U.S. airports. SFO and many other major U.S. airports are located in areas that would permit the expansion of new runways or the reconfiguration of existing runways in a manner that would substantially reduce congestion and delay. SFO cautions that simply because the use of congestion management solutions is appropriate at LGA, it does not mean that such solutions are always appropriate for other airports. Congestion management should not be viewed as a panacea for the serious congestion and delay issues that the aviation system has experienced and will continue to experience. Other airports must be able to take advantage of particular solutions that best fit their individual circumstances and their physical environment and layout, as well as take into account the communities that they serve.

Airport Proprietary Rights

In light of differing local concerns and priorities, an individual airport proprietor is often in the best position to determine the most effective method to reduce delay and congestion at its airport. In the case of LGA, the Port Authority of New York and New Jersey ("Port Authority"), which operates several local airports in the New York metropolitan region in addition to LGA, is the best judge of the type of aircraft that might be encouraged to use particular regional airports, which facilities may be shared, the noise concerns of the local community, congestion problems, and other issues that are specific to its airport system. Additionally, it is

within an airport proprietor's traditional local rights and authority to adopt reasonable and not unjustly discriminatory measures to allocate scarce airport infrastructure. 49 U.S.C. § 41713(b)(3); *see Western Air Lines, Inc. v. Port Authority of New York and New Jersey*, 658 F. Supp 952, 960 (S.D.N.Y. 1986), *aff'd*, 817 F.2d 222 (2d Cir. 1987) (upholding 1500 mile perimeter rule as necessary to manage congestion problems at LaGuardia). Although local airport proprietor powers are limited under this statute and its corresponding interpretative caselaw, an airport proprietor possesses authority to address congestion and delay problems at its facilities, especially in light of local needs and concerns.

An airport must have the autonomy to tailor any particular congestion management or capacity enhancement solutions to its individual circumstances, so long as that autonomy is exercised in a reasonable, nonarbitrary and not unjustly discriminatory manner, in keeping with applicable federal laws and grant assurances. For example, encouraging the use of larger aircraft -- "upgauging" -- may work at some airports but may not be appropriate at other airports, depending on the nature and frequency of air carrier service being offered. SFO urges the FAA to continue to recognize that local airport proprietors are often in the best position to understand the form of congestion management that is most appropriate to serve the needs of the particular airport and surrounding communities.

Thus, the individual airport should be able to oversee implementation of congestion management without securing prior approval of the FAA or air carriers serving the airport. As long as the form of congestion management is not unreasonable, is nonarbitrary and does not unjustly discriminate, the airport proprietor

should be able to design and implement the form of congestion management that is suitable for its particular circumstances. This is fully in keeping with the traditional roles of the airport proprietor and makes maximum use of the proprietor's management of its own facilities and its relationships with surrounding local communities.

Congestion Management Options Under Consideration for LaGuardia

Turning to the specific congestion management options for LaGuardia, SFO supports implementation of further congestion management at LaGuardia. As the FAA notes, notwithstanding the near gridlock that existed at LaGuardia in the fall of 2001 following the implementation of the AIR-21 exemptions to the High Density Rule ("HDR), air carriers operating at LaGuardia continued to schedule additional flights. 66 Fed. Reg. at 31733. Under these circumstances, the Port Authority, and ultimately the FAA, had no choice except to impose additional congestion management beyond the long-standing HDR -- in this case, a temporary slot lottery.

SFO believes that it is appropriate for the Port Authority and the FAA to consider options to replace the temporary slot lottery. The five options identified by the Notice as being under consideration (although the FAA has indicated that these options are not exhaustive) generally fall into two broad categories: (1) market-based approaches and (2) administrative options. For several reasons, SFO believes that market-based approaches to congestion management are generally superior to any of the administrative options under consideration.

In most other areas of the U.S. market economy, prices operate to allocate scarce resources in the most efficient manner. Efficient allocation of scarce resources

ensures that those resources are put to their highest value use, and that an efficient quantity is consumed. The same principles should be applied to the allocation of runway capacity. Also, over the longer term, market-based prices send proper signals to capital markets so that appropriate investments in capacity, in this case, expanded runways, are made at appropriate times.[3]

Market-based policies would address a fundamental problem of the current system of allocating scarce runway assets. As many commentators have pointed out, congestion and delay costs are spillover costs, or as economists describe them, "external" costs that are not captured in current landing fees and traditional airport pricing.[4] Market-based pricing of scarce runway access will be beneficial in that it would force airport users to "internalize" the costs that they otherwise impose externally and that are currently borne by the travelling public and the airport system.

For these reasons, the Airport believes generally that market-based approaches have significant advantages over administrative options. However, the Airport recognizes that whatever form of congestion management is adopted at LaGuardia should be clearly understandable and administratively simple to implement. Also, whatever form of congestion management is selected by the FAA and the Port Authority for LaGuardia may not be directly transferable to other major U.S. airports.

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[3] *See* E. Murphy and J. Worth, *Some Regulatory and Institutional Barriers to Congestion Pricing at Airports*, U.S. Dep't of Treasury Research Paper No. 2001-01 (May 2001) (hereinafter "Treasury Research Paper").

[4] Dorothy Robyn, "Ending Runway Gridlock," at Blueprint: Ideas for a New Century, Sept. - Oct. 2001, at 5-6, available at http://www.ndol.org/blueprint/2001_sep-oct/19_runway_gridlock.html. Ms. Robyn was former Special Assistant to President Clinton with the responsibility for transportation matters.

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As the DOT has noted in its companion notice on market-based alternatives to manage congestion, there is no "one size fits all" approach to the airport congestion problem. [5]

SFO briefly addresses below some aspects of the various options identified in the Notice.

Congestion-Based Landing Fees

Traditional landing fees, often set under airline-airport lease and use agreements, are charged on the basis of pounds of landed weight. Weight-based landing fees do not factor in the full costs of air carrier operations at capacity-constrained airports including the costs of congestion and delay imposed on the airport system and other airport users. Additionally, weight-based landing fees contribute to the excess demand for airport landing facilities during periods of congestion.[6]

One measure of the inefficiency of existing landing fees to allocate scarce runway resources is the distribution of large versus small aircraft at LaGuardia. As the FAA Notice details, LaGuardia has experienced a steady trend toward the use of smaller commercial aircraft such as Regional Jets ("RJs"), which has contributed to that airport's severe congestion problem. For example, in 1996, 26.5 percent of all air carrier operations at LaGuardia were in aircraft of 77 seats or less. By April 2001, the percentage of such smaller aircraft at LaGuardia had increased to 36.7 percent.

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[5] 66 Fed. Reg. at 43949.

[6] Treasury Research Paper at 6.

66 Fed. Reg. 31733. As the FAA notes, smaller aircraft have contributed to increased congestion and delay at LaGuardia. 66 Fed. Reg. at 31733. SFO agrees with the FAA's conclusion that "[a] proper balance between access and airport congestion must be struck if LGA's limited resources are to be used as efficiently as possible." *Id.*

SFO was among the first airports in the Nation to publicly recognize and support the concept of "upgauging" as a means of congestion management.[7] The use of congestion-based landing fees or per movement landing fees will encourage the use of larger, more efficient aircraft. The use of fewer, larger aircraft will in turn alleviate congestion and reduce delays.

SFO declines to comment on the specific congestion-based fees under consideration for LaGuardia because SFO believes that the Port Authority and the FAA are in a better position to evaluate the relative levels and composition of the market-based fees. However, the Airport endorses the concept of congestion-based landing fees for LaGuardia as the preferred approach among the two market-based approaches (pricing or an auction system) to promote the most efficient use of scarce airport facilities.

With respect to congestion-based pricing, the FAA asked for comments on a number of specific questions. 66 Fed. Reg. at 31737. In response to the FAA's question as to "whether the proposed range of fees will likely influence air carrier

[7] *See* Charles River Assocs. and the John F. Brown Company, *Reducing Weather-Related Delays and Cancellations at San Francisco International Airport* (April 2000) (hereinafter "CRA Report").

behavior and manage congestion and delay at LGA," as noted above, SFO cannot comment on the exact landing fee levels proposed by the Port Authority. However, in general, based on its own experience with landing fees, SFO believes that congestion fees, if they are set at appropriate levels, can and will influence airline behavior. For example, SFO believes that the use of market-based congestion fees will promote air carrier use of larger, more efficient aircraft.

With regard to the FAA's question concerning whether congestion-based fees will maintain and/or expand service to small communities and foster new airline entry into the LaGuardia market, the Airport believes that if the fees are properly structured they can serve to maintain small community service and continue to promote new entry. As the Notice discusses, there are a variety of mechanisms that can be employed to maintain and continue to promote small community air service. One possibility is a credit or reduction in fees for air carriers serving small communities. Another option would be to create a set-aside or partial exemption from market-based fees for air carriers serving small communities. With respect to new entrants, SFO believes that new entrants make decisions on whether or not to enter a particular market based on the totality of circumstances at an airport -- *i.e*, the overall level of demand for air service, the nature and potential growth of such demand, the quality of airport services and amenities, network and carrier affiliations, and pricing of airport services. No single factor, in SFO's view, should deter or prevent new entrants from servicing LaGuardia.

Finally, with respect to the FAA's question regarding whether a congestion pricing approach will enable a smooth transition to the expiration of the HDR in

2007, the Airport does not foresee that a new pricing methodology would prevent a smooth transition. Airports change landing fee and pricing methodologies over time and air carriers adjust to such changes. In this case, air carriers operating at LaGuardia will have a sufficient period to adjust to the new pricing system. Furthermore, the process of establishing a congestion-based pricing system will likely have to be an iterative process in order to allow the airport to identify the appropriate market-based level that reduces congestion and delay.

Auction of Landing and Take-Off Rights

The second market-based approach identified in the Notice is a proposal to auction off a specified number of landing and takeoff slots. 66 Fed. Reg. at 31737. Under the proposal conceived by the Port Authority, the system would involve reauctioning landing and takeoff slots every four years (25% per year).

In concept, a properly structured auction can have many of the salutary benefits that a congestion pricing system possesses. Economists suggest that both congestion pricing and auctions can be effective methods for reducing peak-period demand and improving efficiency of operations at congested airports.[8] Some suggest, however, that auctions may be slightly preferable to congestion pricing because the latter may take some time before the precise price level is achieved that reduces congestion. Also, auctions may provide more certainty about congestion levels.[9]

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[8] Treasury Research Paper at 4.

[9] *Id.*

One downside of auctions, however, is that they probably entail a more complex design and may be somewhat more costly to administer than congestion pricing.[10]

Auctions have been utilized by other federal agencies to allocate scarce resources that are subject to federal regulation. For instance, since the early to mid-1990s, the Federal Communications Commission ("FCC") has conducted over 30 auctions of scarce resources such as wireless spectrum for cellular and other wireless communications services. In many instances, the FCC has successfully carried out auctions of spectrum with similar "network attributes" to those found in the national airport system.[11]

As noted above, SFO believes that it is important that any auction used to allocate scarce runway capacity be clearly understandable and not subject to manipulation. Certain types of auctions have in the past been vulnerable to collusion and manipulation.[12] Provided that these problems can be avoided, SFO believes an auction would potentially be an appropriate market-based approach to manage congestion and delay, although SFO believes that congestion-based pricing is simpler and therefore a preferable market-based approach to congestion management.

Again, the Airport also believes that an auction mechanism can be tailored to preserve service to small communities and encourage new entrants. As the FAA

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[10] *Id.* 4-5.

[11] *Id.*

[12] Paul Klemperer, *What Really Matters in Auction Design*, 16 J. Econ Perspectives 169, 170 (Winter 2002).

notes, these goals can be accomplished, for example, by offering rebates or discounts to new entrants and carriers offering service to small communities.

Use of Revenues Generated from Market-Based Approaches

The FAA states that "it is anticipated for a market-based approach to be effective in allocating scarce resources at [LaGuardia], the revenue generated would far exceed the amount collected by traditional airport charges." 66 Fed. Reg. at 31737. The FAA asks for comments on what uses should be made of "revenue in excess of the airport's traditional cost base." *Id.* at 31738.

SFO believes that there is a fundamental misconception in the FAA's phrasing of the question. The question appears to *assume* that market-based prices or fees are "excess." Revenues are not excessive if they are market-based and promote an efficient allocation of scarce resources. From the vantage point of market economics, it is incorrect to attempt to link market prices with the historic cost of a particular good or services. Prices adjust in a market economy to reflect the equilibrium between demand and supply. Accordingly, SFO believes that by definition market-based pricing of runway access will not gouge airport customers or generate "excess" revenues. Moreover, under the current weight-based system of landing fees, airlines capture any "excess" profits that are generated by scarce capacity, or viewed another way, they actually generate excess costs borne by others. Congestion pricing or other market-based system of congestion management would transfer those profits to local government airport proprietors where they can be used for the public benefit.

In any event, most airport proprietors are likely to use market-based revenues for airport development or capacity enhancement projects. In the unique

circumstances of LaGuardia where new runways cannot be added, market-based revenues could be used, for example, for other airport improvements, to pay for projects at other regional airports, for noise mitigation, in part to fund air service to small communities and for similar uses. SFO believes that, within an overall framework, the airport proprietor, here the Port Authority, should have the flexibility to decide how the revenues generated from market-based pricing will be used.

Administrative Gauge Controls

The first administrative option for managing congestion at LaGuardia identified in the Notice is a proposal for the FAA to establish a "minimum aircraft size operating at LGA." 66 Fed. Reg. at 31738 This administrative approach would address one of the causes of delay at LaGuardia, the growing trend toward use of smaller aircraft, by restricting the access of such aircraft to the airport. To address concerns of smaller communities about this administrative approach, the proposal apparently envisions granting a limited number of exemptions from the minimum aircraft size rule for air carriers serving small communities.

SFO has long recognized that encouraging the use of larger aircraft -- upgauging -- can potentially result in a more efficient use of scarce runway infrastructure. Indeed, following an extensive study of the causes of delay at SFO that was released early in 2000,[13] SFO considered the possibility of adopting a local upgauging rule pursuant to Part 161 of the FAA regulations in to order to reduce

[13] CRA Report.

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congestion and delay caused in part by aircraft representing 18 percent of SFO's total operations carrying only 3 percent of its passengers.

Although SFO believes that a rule requiring a minimum aircraft size can produce benefits in terms of congestion and delay reduction, SFO believes that in most cases, if the airport is not otherwise barred from using them, market-based approaches to congestion management are generally preferable and more reliable in achieving the goal of reducing congestion and delay.

New Slot Allocation Rule

The second administrative approach identified in the Notice involves creating a new slot allocation rule that would survive after 2007, when the current HDR is scheduled to expire. Under this proposal, the basic framework of the HDR would be retained but the pool of slots for small community service would be "rationalize[d]" by consolidating into a single category the HDR commuter slots, the AIR-21 exemption slots allocated to small hub and nonhub airports, and air carrier slots reserved for small communities. 66 Fed. Reg. 31739. The new rule would also provide for a limited withdrawal of slots (for example, 3 percent per year) from the air carrier category for new entrant service.

Although this administrative option appears to make modest improvements in the current HDR, it in effect extends the long-standing use of a slot mechanism at LaGuardia indefinitely. SFO believes that either of the market-based approaches is preferable as a method of congestion management to the retention of a modified slot allocation rule.

Administrative Slot Reallocation

Another administrative option under consideration is the immediate repeal and replacement of the HDR by a new rule. Under the new rule, slots would be established with fixed expiration dates and then be periodically reallocated. A certain percentage of slots would be held back from larger incumbent carriers and used as a pool of slots for allocation by lottery among (1) new entrants, (2) small community service providers, and (3) large incumbent carriers. Periodic withdrawal of slots is intended to gradually increase the total number of slots available to new entrants and air carriers serving small communities.

Although SFO applauds the FAA's goals in seeking to improve the existing slot allocation system at LaGuardia, SFO believes that the market-based options (preferably congestion-based pricing, or, as a second choice, an auction system) will allow for more efficient use of LaGuardia's scarce runway capacity. Market-based pricing or other market-oriented approach is a superior method of congestion management because it is dynamic and less likely to produce "gaming" and other perverse effects that virtually any administrative mechanism may engender. Market-based mechanisms such as congestion pricing are designed to effect the marginal user of scarce runway resources (*e.g.*, a turboprop plane that could just as readily operate from another regional airport), and thus in most cases are better tailored to achieve the objective of reducing airport congestion and delay.

Conclusion

SFO strongly supports the cooperative efforts of the FAA, the Port Authority and the airlines to reduce chronic congestion and delay at LGA. In particular, SFO

favors the use of market-based alternatives, such as congestion pricing, to promote more efficient use of scarce runway resources. These solutions not only appear to be the most efficiently implemented, they are likely to have the greatest chance of successfully reducing congestion and delay at LaGuardia.

SFO reiterates the important role of airport proprietors in creating and administering, in cooperation with the FAA, any congestion management solutions implemented at their airports. Airport proprietors and airport management have the greatest familiarity with the local community concerns and needs, and are therefore in the best position to use that knowledge and expertise to create the most efficient congestion management solution for the airport and the community. Accordingly, airport proprietors should be permitted under their local proprietary powers to establish and oversee congestion management suitable for the needs of their particular airports.

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